

APPEAL NO. 021244
FILED JUNE 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 25, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable (low back) injury on _____, and did not have disability.

The claimant appeals on sufficiency of the evidence grounds asserting that all of the evidence was not presented at the CCH and attaching additional information to his appeal. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Regarding the additional information attached to the claimant's appeal, most of which is submitted for the first time on appeal (one report had been offered at the CCH but had been excluded by the hearing officer as not having been timely exchanged), documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence would need to have come to the appellant's knowledge since the hearing; it must not have been due to lack of diligence that it came to his knowledge no sooner; it must not be cumulative; and it must be so material it would probably produce a different result upon a new hearing. Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence does not meet the requirements for newly discovered evidence and will not be considered on appeal.

On the merits, the 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We do not find that so here.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge